

Topic 1: Sustenance Fishing Provisions in Federal and State Settlement Acts

Topic 1(a): Reservations of the Penobscot Indian Nation and Passamaquoddy Tribe (Southern Tribes)

EPA's Decision: The Settlement Acts,¹ specifically the Section 6207(4) of the Maine Implementing Act (MIA),² confirmed the Southern Tribes' sustenance fishing right in their reservation waters, retained since aboriginal times. This is a right that the Tribes have continuously exercised and that is rooted in treaty guarantees that were upheld through the Settlement Acts. The Acts shield that right from state regulation absent a finding of depletion of the fish stock.

Maine's Position:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

EPA's Response:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

¹ The "Settlement Acts" encompass a series of federal and state statutes governing the settlement of land claims asserted by the four federally-recognized tribes in Maine. In 1980, Congress passed the Maine Indian Claims Settlement Act (MICSA), which resolved litigation in which the Southern Tribes asserted land claims to a large portion of the State of Maine. 25 U.S.C. §§ 1721, et seq. MICSA ratified a state statute passed in 1979, the Maine Implementing Act (MIA), which was designed to embody the agreement reached between the State and the Southern Tribes. ME. REV. STAT. tit. 30, §§ 6201, et seq. In 1981, MIA was amended to include provisions for land to be taken into trust for the Houlton Band of Maliseet Indians, as provided for in MICSA. ME. REV. STAT. tit. 30, § 6205-A, 25 U.S.C. § 1724(d)(1). Since it is Congress that has plenary authority as to federally recognized Indian Tribes, MIA's provisions concerning jurisdiction and the status of the Tribes are effective as a result of, and consistent with, the Congressional ratification in MICSA. In 1989, the Maine Legislature passed the Micmac Settlement Act (MSA) to embody an agreement as to the status of the Aroostook Band of Micmacs. ME. REV. STAT. tit. 30, §§ 7201, et seq. In 1991, Congress passed the Aroostook Band of Micmacs Settlement Act (ABMSA), which ratified the MSA. 25 U.S.C. § 1721, Act Nov. 26, 1991, P.L. 102-171, 105 Stat. 1143.

² ME. REV. STAT. tit. 30, § 6207(4) ("Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6."). Subsection 6 limitations pertain to depleted fish stocks due to overfishing.

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Topic 1(b): Southern Tribes' Trust Lands

EPA's Decision:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Maine's Position:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

EPA's Response:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Topic 1(c): Trust Lands of the Houlton Band of Maliseet Indians and Aroostook Band of Micmacs (Northern Tribes)

EPA's Decision:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Maine's Position:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

EPA's Response:

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP

Ex.5 AWP / DPP / ACP